

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

DONALD L. BURLING

§

VS.

§

CIVIL ACTION NO. 1:05cv597

PORSCHE SIMON, ET AL.

§

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Donald L. Burling, an inmate at the Stiles Unit, proceeding *pro se*, brought the above-styled action pursuant to 42 U.S.C. § 1983 against the Porsche Simon, David Doughty, Harlean Howard, and Laticia Mitchell Jones.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends the defendants' motion for summary judgment be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. Petitioner did not fairly provide prison administrators with an opportunity to address or remedy the conduct which forms the basis of his complaint against defendants Doughty, Howard, and Jones. *See Johnson v. Johnson*, 385 F.3d 503, 517 (5th Cir. 2004); *Bisby v. Garza*, 2009 WL 2709326 at

*2 (5th Cir. Aug. 28, 2009) (unpublished). Thus, plaintiff did not properly exhaust administrative remedies concerning such defendants. *Porter v. Nussle*, 534 U.S. 516, 528, 122 S.Ct. 983, 990 (2002). Burling filed a grievance against Simon, but she reasonably responded to the situation and investigated the claims presented to her. The competent summary judgment evidence reveals defendant Simon completed her investigation and forwarded it to the Major or his designee, who was responsible for moving plaintiff, more than twelve hours before plaintiff was assaulted. While harm was ultimately not averted, plaintiff failed to show that defendant Simon acted with deliberate indifference to a substantial risk of serious harm, or that he suffered any harm as a result of her actions or alleged inaction.

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

Appointed counsel is hereby relieved from further obligation in the above-styled action.

So **ORDERED** and **SIGNED** this **11** day of **January, 2010**.



Ron Clark, United States District Judge